

Syllabus: Workers' Comp./Social Security Disability – Spring 2019

Instructor: Robert D. Armano, Esq.
265 Broadway, Rte. 28
Methuen, MA 01844
(978) 683-7704

E-Mail: robarmano@armanolaw.com

Texts: Workers' Compensation (MCLE) – **Recommended - Not Required**
Social Security Disability Practice, Vols. 1 & 2, Thomas E. Bush – **Recommended**
Not Required

Grading Policy: 1. **Final Exam – 100%**

Note: Students who are habitually unprepared for class or are absent without excuse or justification will suffer a grade reduction!

I. MASSACHUSETTS WORKERS' COMPENSATION

Week of 1/22/19 -

THE NATURE AND HISTORY OF WORKERS' COMPENSATION

- M.G.L. c.152, §24 and
- *King v. Viscoloid Co.*, 219 Mass. 420, 106 N.E. 988 (1914) (*The EE's exclusive remedy.*) See also, M.G.L. c.152, §1(4) and
- *McDermott's Case*, 283 Mass. 74, 186 N.E. 231 (1933). ("Employee" defined)

Weeks of 1/29/19 & 2/5/19

WHO ARE COVERED EMPLOYEES?

- M.G.L. c.152, §1(4) and *McDermott's Case*, 283 Mass. 74, 186 N.E. 231 (1933). ("Employee" defined)
- Contract for Hire – *Barofsky v. Lundermac Co.*, 4 Mass. Workers Comp. Rep. 135 (1990);
- Independent Contractors - *McDermott's Case*, 283 Mass. 74, 186 N.E. 231 (1933). ("Employee" defined); *Brigham's Case*, 348 Mass. 140 (1964); M.G.L. c149, §148B (Codifying Case Law); *Mactavish v. O'Connor Lumber Co.*, 6 Mass. Workers' Comp. Rep. 174 (1992).
- Domestic Servants – *Peters v. Michienzi*, 385 Mass. 533 (1982).
- Sales Persons – M.G.L. c.152, §1(4)(c) and (d).
- Public Employees – M.G.L. c. 152, §§ 69, and 74; M.G.L. c.41, §111F
- Professional Athletes – M.G.L. c. 152, §1(4)(b).
- Employment Exempt From Coverage – 45 U.S.C. §§51-59 (*Seamen*); 33 USC §§ 901-950 (*Longshoremens*); M.G.L. c.41, §111F.
- Undocumented Workers – *Medellin v. Cashman KPA*, 17 Mass. Workers' Comp. Rep. 592 (2003).

Week of 2/12/19

DEFINING “PERSONAL INJURY” UNDER M.G.L. C. 152

- Statutory Definition – M.G.L. c.152, §1(7A).
- *Niles-Robinson v. Brigham & Woman’s Hospital, Inc.*, 47 Mass. App. Ct. 203 (1999) *fn.* 9.
- *Hammond v. Merit Rating Board*, 9 Mass. Workers’ Comp. Rep. 708 (1995) (*Preexisting condition – compensable or not?*)
- *Thibeault v. Sure Oil & Chem. Co.*, 12 Mass. Workers’ Comp. Rep. 972 (1998) (*Liability Among Successive Insurers*)
- *Zerofski’s Case*, 385 Mass. 590, 433 N.E.2nd 869 (1982) (*Are Wear and Tear Injuries Compensable?*)
- *Cirignano v. Globe Nickel Plating*, 11 Mass. Workers’ Comp. Rep.17 (1997) (*Emotional/Mental Injuries Compensable?*)

Weeks of 2/19/19 & Week of 2/26/19 -

“ARISING OUT OF (“How the accident happened.”) AND IN THE COURSE OF EMPLOYMENT (“When and Where the accident happened.”)

- M.G.L. c. 152, §26.
- *Caswell’s Case*, 305 Mass. 500, 26 N.E. 2nd 328 (1940) (*Nature, conditions, and obligations of employment*).
- *Souza’s Case*, 316 Mass. 332, 334, 55 N.E. 2nd 611, 612 (1944) (*Did employment expose EE to the risk?*)
- *Gwaltney’s Case*, 355 Mass. 333, 244 N.E. 2nd 314 (1969) (*Coming and going*).
- *Sikorowski’s Case*, 455 Mass. 477 (2009) (*Recreational Injury*)
- *Dillon’s Case*, 324 Mass. 102, 85 N.E.2nd 69 (1949) (*Is Fault a Factor?*)
- *Peter’s Case*, 362 Mass. 888, 291 N.E. 2nd 158 (1972) (*EE engaged in “Regular Work?” Does it matter?*)
- *Chapman’s Case*, 321 Mass. 705, 75 N.E.2nd 433 (1947) (*Incidents of Employment – Lunch Hour Injuries*).
- *Caron’s Case*, 351 Mass. 406, 221 N.E.2nd 871 (1966) (*Transportation as an Incident of Employment*).
- *Patterson v. Liberty Mutual Insurance Co.*, 48 Mass.App.Ct. 586, 597, 723 N.E.2nd 1005, 1013 (2000). (*Causal Connection-More than Hypotheses of Conjecture*)
- *Luongo’s Case*, 313 Mass. 440, 47 N.E. 2nd 938 (1943) (*Are complications from medical treatment within the chain of causation?*)

Week of 3/5/19 -

MISCONDUCT OF EMPLOYER OR EMPLOYEE

- *Dillon's Case*, 324 Mass. 102, 85 N.E.2nd 69 (1949)(Misconduct a bar to compensation?)
- *Vaz's Case*, 342 Mass. 495, 174 N.E.2nd 360 (1961) (EE substantially adds to the hazard)
- *Ferreira's Case*, 294 Mass. 405, 2 N.E.2nd 454 (1936)
- *Hamel's Case*, 333 Mass. 628, 132 N.E.2nd 403 (1956)(EE violates statute, ordinance, or ER prohibition – Bar to compensation)
- M.G.L. c.157, §27 (“*Serious and Willful Misconduct a Bar to compensation?*”)
- *Smith v. Raytheon*, 9 Mass. Workers' Comp. Rep. 477 (1995)(“*Serious and Willful Misconduct redefined*”)
- *Eldridge's Case*, 310 Mass. 830, 38 N.E.2nd 566 (1941) (Does intoxication constitute “*serious and Willful*” misconduct?)
- M.G.L. c.152, §28 (*Employer's Serious and Willful misconduct*)
- *Smith v. Raytheon*, 9 Mass. Workers' Comp. Rep. 477 (1995) (*knowable high degree or likelihood that substantial harm will result*).

Week of 3/13/19 – SPRING BREAK

Week of 3/19/19 -

BENEFITS

- M.G.L. c.152, §§ 31,32, 33, 35A, 34, 35, 34A and 36
- *Palomba's Case*, 9 Mass. App.Ct. 881, 401 N.E.2nd 899 (1980)
- M.G.L. c.152, §1(1)(Statutory Definition of “*Average Weekly Wage*”)
- *Borofsky's Case*, 411 Mass. 379, 582 N.E.2nd 538 (1991)(Do fringe benefits in the private sector factor into the calculation of the AWW?)
- *Powers's Case*, 275 Mass 515, 176 N.E. 621 (1931)(Does the AWW include tips, commissions, meals, lodging, use of a car, etc.)
- *Nelson's Case*, 333 Mass 401, 131 N.E.2nd 193 (1956)(Concurrent employment and the AWW calculation)
- *Bunnell v. Wequasset Inn*, 12 Mass. Workers' Comp. Rep. 152 (1998)(Calculation of the AWW for the seasonal employee)

Week of 3/26/19 –

MEDICAL BENEFITS, VOCATIONAL REHABILITATION & ATTORNEY'S FEES

- M.G.L. c. 152, §§13 & 30
- 452 C.M.R. §6.00 et seq. (*Utilization Review*)
- M.G.L. c.152, §30G (*EE entitled to Voc. Rehab./Lump Sum Prohibition*)
- M.G.L. c.152, §35D(5)(*Participation in approved Voc. Rehab program not evidence to establish modification/discontinuance of benefits*)
- M.G.L. c.152, §13A (*Attorney's Fees*)

Week of 4/02/19 –

MASSACHUSETTS WORKERS' COMPENSATION CLAIMS PROCEDURE –

- *M.G.L. C. 152, §§41-44(Obligation to report work injury / Statute of Limitations)*
- *M.G.L. c.152, §10 and 452 C.M.R. 1.08 (Conciliation)*
- *452 C.M.R. 1.01 thru 1.08*
- *452 C.M.R. 1.12 (Discovery and Depositions)*
- *452 C.M.R. 1.10 and M.G.L. c.152, §10A (Conferences)*
- *M.G.L. c.152, §11A (Board Impartial Medical Examiner)*
- *452 C.M.R. 1.11 and M.G.L. c.152, §11B (Hearings)*
- *M.G.L. c.152, §11C (Appeal to Reviewing Board)*
- *M.G.L. c.152, §12(2)(Court of Appeals)*

Week of 4/09/19 –

THIRD PARTY ACTIONS, LUMP SUM SETTLEMENTS

- Lump Sum Settlements – *M.G.L. c.152, §48*
- Fee Petitions pursuant to *M.G.L. c.152, §15*
- *Curry v. Great American Insurance Co.*, 80 Mass. App. Ct. 592 (2011). (Any portion of a 3rd party award or settlement designated as “pain & suffering” is not subject to WC insurer’s right to recovery pursuant to *M.G.L. c.152, §15.*)

II. SOCIAL SECURITY DISABILITY

Week of 4/16/19 –

TITLE II—FEDERAL OLD—AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS – CREATION OF SOCIAL SECURITY DISABILITY INSURANCE (SSDI)

- Creation of SSDI – *42 U.S.C. §402 et seq.* (Title II of the Social Security Act is administered by the Social Security Administration. Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42.)
- Statutory Definition of “Disability” – *42 U.S.C. §§423(d)(1)(A) and 1382c(a)(3)(A); 42 U.S.C. §§423(d)(2)(A) and 1382c(a)(3)(b).*
- Statutory Definition of “Physical or Mental Impairment” – *42 U.S.C. 423(d)(3) and 1382c(a)(3)(D).*
- Blindness – *20 C.F.R. §§404.1581, 416.981*
- Drug Addiction/Alcoholism Prohibition – *42 U.S.C. §§423(d)(2)(c) and 1382c(a)(3)(J)*
- Federal Regulations for the Implementation of SSDI – *20 C.F.R. §404 et seq.*
- Additional Sources of Law, Policy & Procedure for Determining “Disability” – *Decisions of the Federal District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court; Program Operations Manual Systems (POMS); Social Security Rulings (SSR); Hearings, Appeals and Litigation Law Manual (HALLEX)*

Week of 04/23/19 –

THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

- 20 C.F.R. §§404.1520, 416.920
- Step 1 – “Substantial Gainful Activity (SGA)” – 20 C.F.R. §§404.1505, 416.905
- Step 2 – “Severe Impairment” Lasting Twelve (12) Months or Results In Death - 20 C.F.R. §§404.1521, 416.921

Week of 4/30/19 –

THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS (Cont.)

- Step 3 – Impairment that Meets or Equals a “Medical Listing” – 20 C.F.R. §404, Subpart P, Appendix I.
- Step 4 – Does the Individual Have the Ability to Perform “Past Relevant Work (PRW). – 20 C.F.R. §§404.1594(c)(2), 416.994(b)(iv)
- Step 5 – Does the Individual have the Ability to Perform “Other Work” - 20 C.F.R. §§404.1560, 416.960
- Medical Vocation Guidelines (“The Grids”) – 20 C.F.R. Pt. 404, Subpt, App. 2. And 20 C.F.R. §§404.1569, 416.969
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Last Day of Class – May 2, 2019 – Review (Time Permitting!)

FINAL EXAM - To Be Announced! **ANY FINAL EXAM CONFLICTS *MUST BE CALLED TO THE ATTENTION OF DEAN COYNE AS SOON AS THE PRELIMINARY FINAL EXAM SCHEDULE IS ANNOUNCED!***

The Instructor reserves the right to alter or amend this Syllabus!